

Notice of Allowability

Application No.

10/735,255

Examiner

Patricia C. Mallari

Applicant(s)

NISSILA, SEPPO

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the RCE filed 6/14/06.
2. ☒ The allowed claim(s) is/are 1-10 and 12-21.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 6/14/06 has been entered.

REASONS FOR ALLOWANCE

Claims 1-10 and 12-21 are allowed. The allowability of these claims was addressed in a previous Office action filed 12/14/05 and is repeated below.

The following is an examiner's statement of reasons for allowance: Regarding claims 1-9 the prior art fails to teach or fairly suggest a method for coding heart rate information wherein the person's heart beat intervals are measured during a physical exercise, in combination with all of the other limitations of the claims. US Patent No. 5,267,942 to Saperston teaches an arrangement as described above, which description inherently discloses a method of using such an arrangement. However, Saperston lacks measuring the heart beat intervals during a physical exercise. In fact, the method of Saperston requires the person to relax during heart beat interval measurement (col. 11, lines 9-18 of Saperston). US Patent No. 6,572,511 to Volpe and US Patent No. 6,230,047 to McHugh both teach a method coding at least a portion of measured heart

beat interval information such that the rhythm of the sound collage depends on the measured heart beat interval, largely as described in claim 1. However, neither McHugh nor Volpe teaches coding the information such that the duration of the sound collage is shorter than the time spent for measuring the heart beat intervals. There appears to be no motivation to combine Saperston with either Volpe or McHugh.

Regarding claims 10 and 12-21, the prior art of record fails to teach or fairly suggest an arrangement for coding heart rate information comprising a means for coding at least a portion of packed heart beat interval information into a sound collage, such that the sound collage is shorter in duration than the measurement time, the coding means comprising means for selecting a musical genre of the sound collage to be use in the coding, means for changing sound scale based on the length of the heart beat intervals or duration of the heart beat interval measurement, means for changing the rhythmical complexity of the music base don the variation rate of the heart beat intervals, or means for changing the volume in the sound collage based on the heart beat intervals, in combination with all of the other limitations of the claims. Regarding claim 16, US Patent No. 6,572,511 to Volpe teaches means for changing the volume of the music in the sound collage based on measured heart beat intervals (col. 2, lines 44-65 of Volpe). However, there appears to be no motivation to combine Saperston with Volpe.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia C. Mallari whose telephone number is (571) 272-4729. The examiner can normally be reached on Monday-Friday 10:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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pcm

Patricia C. Mallari
PATRICIA C. MALLARI
EXAMINER